

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 13TH AUGUST 2007 / 22ND SRAVANA 1929

Bail Appl..No. 4672 of 2007()

CRIME NO.269/07 OF THE MUSEUM POLICE STATION

: PETITIONER/3RD ACCUSED

K.M.SAFEER, S/O P.A.MOHAMMED NOOHU,
SEEMA MANZIL, KOTTAPPURAM VILLAGE,
THEKKUMBHAGOM, PARAVOOR, KOLLAM.

BY ADV. SRI.S.M.ALTHAF

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 13/08/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J

B.A.No.4672 of 2007

Dated this the 13th day of August, 2007

ORDER

Application for anticipatory bail. The petitioner is the 3rd accused. The crime has been registered alleging commission of offences punishable, inter alia, under Section 420 r/w 34 I.P.C against 3 accused persons. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The crux of the allegations is that the gullible job seekers were fraudulently induced to part with amounts on the unintended promise that job visas will be secured to them. They through one Sadanandan are alleged to have contacted accused 1 and 2 who allegedly promised that they will be provided employment in the Khadi Board through the petitioner herein, the 3rd accused. Amounts collected were all handed to the 1st and 2nd accused, who in turn allegedly handed over such amounts to the 3rd accused, ie. the petitioner herein. Amounts have not been returned. Jobs have not been secured. It is, in these circumstances, that the F.I statement was lodged and the crime was registered.

3. The petitioner takes the stand that he is in no way connected with the fraudulent deception allegedly practised by accused

1 and 2 and or the said Sadanandan. According to the petitioner between him and accused 1 and 2 and Sadanandan there was no such transaction as alleged in the crime. According to him, there was only a loan transaction between Sadanandan and accused 1 and 2 on the one side and the petitioner on the other. An agreement had been entered into admittedly between the 3rd accused and the said Sadanandan, whereunder it is agreed that an amount of Rs.1,50,000/- received shall be repaid. A cheque has also issued by the 3rd accused for repayment of the amount due. In short, the petitioner takes up a contention that he was involved only in a loan transaction with the said Sadanandan and he had absolutely nothing to do with the transaction promising visa. The victims have a definite case that agreement was entered into in the name of Sadanandan for repayment of the amount only and the cheque was issued on the agreement that the documents cannot show all the details of the real transaction as it would be detrimental to the interests of all concerned.

4. The learned counsel for the petitioner submits that in any view of the matter, the petitioner does not deserve to be arrested and detained in custody. At worst, his failure is only to repay an amount which is due admittedly. In these circumstances directions under Section 438 Cr.P.C may be issued in favour of the petitioner, it is prayed.

5. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the indications clinchingly show the involvement of the petitioner in the transaction. It is too early to naively swallow the version of the petitioner that he was involved only in a loan transaction. The agreement, it is eloquently evident, was entered into to cloud or cover up the real transaction between the parties. At any rate, this is not a fit case where the petitioner can be permitted to arm himself with an order of anticipatory bail. The petitioner deserves to be interrogated. Complete and exhaustive interrogation of the petitioner is absolutely necessary to unravel the mystery in the crime. The petitioner may not be granted anticipatory bail at this stage as that would hamper the smooth course of investigation, submits the learned Public Prosecutor .

6. I have considered all the relevant inputs. The case diary has been perused by me. At this early stage of investigation, I shall scrupulously avoid any detailed discussion on merits about the acceptability of the allegations or the credibility of the data collected. I will not also comment on the possible defences which the petitioner the 3rd accused wants to raise. Suffice it to say that on an anxious evaluation of all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. I agree with the learned Public

Prosecutor that interrogation of the petitioner is essential for a proper resolution of the crime in this case. It is not necessary or expedient in the interests of justice to issue any directions under Section 438 Cr.P.C in favour of the petitioner. This I am satisfied is a fit case where the petitioner must resort to the ordinary and normal course of appearing before the Investigating Officer or the learned Magistrate having jurisdiction. He must then seek regular bail in the ordinary course.

This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-